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November 8, 2010

Water Docket
Environmental Protection Agency
Mailcode 28221T
1200 Pennsylvania Ave NW
Washington, DC 20460

**RE: Draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay
Docket No. EPA-R03-OW-2010-0736**

Dear Sir or Madam,

Constellation Energy ("Constellation" or "Company") appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on the Draft Chesapeake Bay Total Maximum Daily Load ("Draft TMDL"), which was announced in the Federal Register on September 22, 2010 (75 Fed. Reg. 57776). EPA posted the Draft TMDL for public review on its website (<http://www.epa.gov/chesapeakebayTMDL>) on September 24, 2010.

Constellation is based in Baltimore, Maryland and owns and operates generation and energy services business throughout the United States. The Company offers wholesale power marketing, risk management, power plant development, power generation and distribution and other energy-related products and services to residential, commercial, and industrial customers. Constellation has an ownership stake in 33 energy generating facilities, of which ten in Maryland and one in Pennsylvania are within the Chesapeake Bay watershed. Its subsidiary, Baltimore Gas and Electric, distributes electricity and gas to over one million customers in central Maryland and has facilities located throughout its service territory related to gas and electric distribution. Because of our extensive presence in Maryland, the Draft TMDL has the potential to affect our business operations.

Environmental stewardship is a key value for Constellation and its employees. The nature of our business closely links Constellation to the natural resources we share with neighbors around our facilities. We believe that proper care of the environment is essential to the well-being of our business, our employees, and the world community, albeit from a local, regional, national or global perspective. Accordingly, Constellation is fully committed to protecting the environment and responsibly managing natural resources. We continually work to keep the trust of the communities where we do business by operating and maintaining our facilities in ways designed to protect the environment. Constellation has made major environmental investments and

improvements at its generation facilities, continuing to focus on those improvements that deliver the greatest benefit to the environment, public health and welfare. In the last few years alone, Constellation has spent more than \$1.1 billion on emission-reducing equipment and upgrades at its Maryland facilities. We continue to evaluate new technologies that might deliver additional environmental benefits.

As part of our environmental stewardship initiatives, we provide funding to organizations that are committed to Bay restoration such as the Chesapeake Bay Trust, Ducks Unlimited, Alliance for the Chesapeake, and the Corporate Wetland Restoration Partnership. Two of our facilities (Calvert Cliffs and Spring Gardens Gas Distribution Facility) are Wildlife Habitat Council certified sites.

Therefore, for the reasons described above, Constellation strongly supports improving water quality in the Chesapeake Bay and recognizes that reductions in the nutrients nitrogen and phosphorus and sediments are required to achieve water quality goals for dissolved oxygen, water clarity, submerged aquatic vegetation, and chlorophyll-a (Executive Summary, p. 3). That said, we believe that restoration programs should not be imposed unless they are based on a good and complete body of science and research and each entity is treated fairly so that no one entity shoulders a unreasonable share of the burden. Furthermore, EPA's actions in administering a program must be consistent with and within the legal bounds of the enabling legislation and its implementing regulations. These precepts are the basis of two issues discussed later in this letter which are of particular concern to Constellation as regards the Draft TMDL.

We have been following the development of the Draft TMDL on our own and as members of the Utility Water Act Group (UWAG) and the Edison Electric Institute (EEI). UWAG will be submitting detailed comments on the Draft TMDL which Constellation strongly endorses and urges EPA to consider. Both EEI and UWAG are members of the Federal Water Quality Coalition (FWQC). The FWQC will also be submitting comments and we urge EPA to take those comments into consideration as well. The following paragraphs highlight comments on some aspects of the Draft TMDL as well as our issues of particular concern.

Air Deposition is correctly handled in the Draft TMDL

EPA correctly modeled nitrogen inputs from atmospheric deposition as non-point sources and established load reductions to be achieved based on Clean Air Act regulations by EPA and the states through 2020 (letter from Shawn M. Garvin to Shari T. Wilson, dated July 1, 2010). This methodology is appropriate because EPA has no authority under the Clean Water Act to regulate air emissions. Constellation encourages EPA to maintain this approach for air deposition sources in Phase II and Phase III of the TMDL.

Offsets and trading are appropriate to account for growth

Growth in the watershed is continuing and will continue for the foreseeable future; therefore, the Chesapeake Bay TMDL must have a mechanism to allow for growth while still meeting reduction targets and water quality goals. Maryland has already an established program for point source to point source trading (established in April 2008) and is developing complementary programs to administer trading and offsets between point sources and agricultural non-point sources. Furthermore, Maryland plans to use these two programs as a foundation for development of an appropriate framework for other point to non-point source trades (Maryland Watershed Implementation Plan, Executive Summary, p. ES-4). Constellation fully supports the use of offsets and trading as a means of allowing new and expanded discharges while continuing to meet load reductions.

Catastrophic failure of hydroelectric dams should not be included in the Draft TMDL

As a partner in the Safe Harbor Water Power Corporation, located in Pennsylvania, Constellation has a vested interest in how sediments and associated nutrients that settle in the reservoirs behind hydroelectric dams are managed in the Draft TMDL. Accumulation of materials behind the dams is inevitable and serves to minimize downstream transport. EPA has taken this into account in the Draft TMDL (Draft TMDL Section 10.6). Some stakeholders suggested at the October 13, 2010 public meeting in Annapolis, MD that the loadings should account for a potential dam failure or extreme storm event that would release sediments and nutrients downstream. The dams are not the source of the sediments, upstream sources are.. EPA has made provisions in the Draft TMDL for the respective states to adjust their allocations from upstream sources should the ability of the dams to trap nutrients and sediments change over time (Draft TMDL Section 10.6). Including a potential catastrophic failure of one or more of the dams is not appropriate and we encourage EPA not to stray from its current approach with regard to dams and a final TMDL.

The Clean Water Act does not provide the necessary legal framework to support all aspects of the current Draft TMDL

While creation of a regional TMDL for the Chesapeake Watershed is important step in the improvement of overall water quality in the Bay, we are concerned that EPA has exceeded its authority under the Clean Water Act (CWA) in three key areas: (1) by establishing TMDLs for the six watershed states and the District of Columbia, (2) by requiring the states and the District of Columbia to provide Implementation Plans subject to EPA's approval and (3) forcing an implementation schedule and threatening consequences for failure to meet milestones. These three issues are more fully described, including reference to legislative history and applicable case law, in the comments submitted by UWAG and the FWQC. Rather than repeat the arguments, we refer EPA to those comments. If EPA believes it must go beyond the creation of a regional TMDL for the Bay and force a schedule and have sanctions for failure in order to meet

the goals of the Chesapeake Bay Restoration Program and Executive Order, it should first seek proper legislative authority.

The model upon which the Draft TMDL is based is still “work in progress” limiting the ability to develop appropriate loadings and allocations

EPA has rightfully acknowledged that its TMDL model is still under development and the next version will not be available until 2011, after the final TMDL is published. While Constellation applauds EPA’s recognition that adaptive management will be required to modify loads and allocations as new information becomes available, and establishment of the TMDLs must occur in phases, we believe it is premature to set a final TMDL at this time based on an incomplete and inaccurate model. Additionally, all of the model inputs and outputs have not been released for peer and public review as we believe is required to satisfy the requirements of the Administrative Procedures Act. This is of particular concern to regulated entities, such as Constellation, where wasteload allocations based on an incomplete and inaccurate model could become part of enforceable permit limits. EPA should make all the relevant information available for public review and reopen the comment period for a sufficient length of time. The current 45-day comment period would not have been sufficient due to its complexity.

EPA’s basis for draft wasteload allocations is not clear

Appendix Q of the Draft TMDL contains EPA’s calculated wasteload allocations. Appendix Q1 contains the loads to achieve proposed amended water quality standards and Appendix Q2 contains the full backstop allocations in the case EPA believes these are necessary. The methodology for arriving at the allocations, specifically for the “nonsignificant” discharges, is not clear. Some have allocated loads, others do not, but should have. For example, Calvert Cliffs Nuclear Power Plant, LLC, where Constellation has ownership interests, (line 6598 in Appendix Q1) has been allocated 0 pounds/year for nitrogen, phosphorus, and sediment which is not correct. Calvert Cliffs has an on-site wastewater treatment plant and uses nitrogen and phosphorus-containing compounds in its plant processes. As required by its NPDES permit, Calvert Cliffs submitted to the Maryland Department of the Environment estimated annual loadings of 15,000 pounds/year of total nitrogen and 100 pounds of total phosphorus. There was no requirement in the Calvert Cliffs permit to estimate sediment loads. Therefore, at a minimum, Calvert Cliffs should have wasteload allocations for nitrogen and phosphorus.

Maryland’s Watershed Implementation Plan (Appendix C) did not allocate watershed loadings to all specific dischargers, but rather considered the “nonsignificant” dischargers as aggregated with individual loadings to be determined at a later date based on Tributary Strategies. This approach seems more appropriate given the fact that the model is still undergoing revision and that information upon which to base the individual loadings appears, in the case of our example, to be incomplete.

Based on this relevant example, EPA should withdraw Appendix Q and work with the states and the District of Columbia to prepare the individual wasteload allocations once all relevant information is known. The revised allocations must then be resubmitted for public review and comment.

EPA should address achievability of the TMDL and resultant socio-economic impacts

EPA should address achievability of the Draft TMDL from a socio-economic perspective. It does not appear that EPA has taken the steps to assess the overall achievability of the allocations set forth in the Draft TMDL. We believe such an assessment is critical to the process particularly with respect to the socio-economic impact that the TMDL may have on the many businesses, states and regional economies falling within its wide scope. EPA should step back and perform such a full analysis, then allow review and comment from interested stakeholders.

Conclusion

Although Constellation strongly supports efforts to improve water quality in the Chesapeake as well as the concept of a regional TMDL for the Bay, we are concerned that in various respects the Draft TMDL has exceeded the jurisdictional bounds of the CWA as written. Such overstepping may compromise smooth progress toward a final TMDL that facilitates actual Bay restoration, a goal that all stakeholders desire. . For the reasons set forth above, it is respectfully suggested that EPA withdraw the Draft TMDL to allow sufficient time for the model updates to be completed. EPA should then solicit public comment on the model (complete with all supporting documentation) while providing enough time for stakeholders to perform thoughtful and insightful analysis on the data. In the interim, EPA should work with the states to continue their water quality improvement efforts. Once the model is updated and reviewed, its accuracy being then most assured, EPA should work with the states and District of Columbia to set TMDL's within the current legal bounds and regulatory framework of the CWA or otherwise seek legislative changes to secure proper legal authority to enact all aspects of the current Draft TMDL.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul J. Allen", with a long horizontal flourish extending to the right.